IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 271 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HARESHKUMAR KANJIBHAI

Versus

MOHANBHAI HARIBHAI

Appearance:

1. First Appeal No. 271 of 1984

MR GAURANG H BHATT for Petitioner No. 1

MR KF DALAL for Respondent No. 1-2

NOTICE SERVED for Respondent No. 3

MR SV RAJU for Respondent No. 4

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE K.A.PUJ

Date of decision: 03/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. The appellant-original claimant, by filing this appeal under Section 110-D of the Motor Vehicles Act, 1939 ('Act' for short), has challenged the judgment and award dated April 16, 1983, passed by the Motor Accident Claims Tribunal (Main), Surendranagar, in MACP No.171 of 1982, by which judgment and award, the appellant was awarded compensation of Rs.19,961/- for the injuries sustained by him in a vehicular accident, which had taken place on February 4, 1982 at 8.15 p.m. at a distance of 3 kms away from Wadhwan on Wadhwan-Limbdi road, near village Memka between truck No.GTW 278 and auto-rickshaw No.GTD 8042. The appellant was, at the relevant time, travelling in the said auto-rickshaw as passenger.

2. The appellant, before the Tribunal, had claimed compensation in the sum of Rs.1,50,000/- on various heads for the injuries sustained by him in the vehicular accident as stated above. It was pleaded in the claim petition filed by the appellant (original claimant), being MACP No.171 of 1982, that, at the relevant time, he was doing the welding work and was earning Rs.600/- per month and, on account of the accidental injuries sustained on his head, he had suffered a permanent disability and was not able to do his routine work. At the time of the incident, the appellant was aged about 20 years.

3. The claim petition filed by the appellant was resisted by the Insurance Company, the driver and the owner of the truck, inter alia, contending that the truck driver was not negligent in causing the accident, and the compensation claimed by the appellant was excessive.

4. The Tribunal had consolidated MACP No.171 of 1982 along with other claim petitions, which arose out of the same accident. On appreciation of oral as well as documentary evidence, the Tribunal held that the appellant had sustained injuries in the vehicular accident which was caused by truck No.GTW 278 and auto-rickshaw No.GTD 8042. On the question of negligence, the Tribunal came to the conclusion that the truck driver was solely negligent in causing the accident. On the quantum, the Tribunal awarded the total sum of Rs.19,961/-, the break-up of which is as follows:

Rs.15,000/- towards pain and suffering
Rs.961/- towards medical expenses
Rs.1,800/- towards attendance charges
Rs.1,000/- towards rich diet, fruits etc.

Rs.1,200/- towards loss of income

Rs.19,961/-
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The appellant has filed this appeal claiming enhanced compensation.

5. Heard learned advocate, Mr. Gaurang H. Bhatt, for the appellant and learned advocate Mr. K.F. Dalal for the respondent. The learned advocates appearing for the parties have taken us through the entire record and proceedings of the case. It is submitted by the learned advocate for the appellant that the Tribunal has not appreciated the nature of injuries and the prolonged treatment undergone by the appellant for the injuries sustained by him on his head. It is an admitted fact that, after the accident, the appellant was removed to the Government Hospital, Limbdi, and, at Limbdi, he was operated and was kept in the hospital for five days. The appellant was, thereafter, shifted to Dr. Pradyot Thakore Hospital, Ahmedabad, where he was kept as indoor patient for 15 to 20 days. Dr. Pradyot Thakore is a neuro-surgeon and his evidence was recorded at Exh.53. He deposed that the appellant was admitted in his hospital on February 8, 1982 for the injuries sustained by him on his head in the vehicular accident which had taken place on February 4, 1982. He deposed that the applicant had sustained fracture over the fronto-parietal region and he was kept in the hospital as indoor patient upto February 22, 1982. Dr. Thakore had examined the appellant again on December 16, 1982 and at that time his condition had improved but he was limping because of the injuries caused on the left lower limp. From the evidence of Dr. Thakore, it becomes evident that the appellant was kept in his hospital for nearly 14 days as indoor patient. The uncle of the appellant, namely, Ishwarlal Budharbhai, was examined at Exh.38. He deposed that he was attending the appellant at the hospital during his treatment and he had to incur expenses of Rs.12,000/-. He deposed that, because of the fact that he was attending the appellant during his illness, he could not attend his business for nearly two months. In view of the above facts and circumstances and the evidence led by the appellant, in our opinion, the Tribunal was not justified in awarding a sum of Rs.961/towards medical expenses. It is true that the appellant had not produced the bills for the purchase of medicine and the charges paid to the doctor, but the fact remains that the appellant was treated as indoor patient at Dr. Pradyot Thakore Hospital, Ahmedabad. Looking to the injuries sustained by the appellant, and the period

of treatment undergone coupled with the fact that the appellant was treated in Dr. Pradyot Thakore Hospital, Ahmedabad, as indoor patient for nearly two weeks, it would be just and adequate to award a sum of Rs.5000/- (Rupees five thousand only), instead of Rs.961/awarded by the Tribunal, towards the medical expenses.

6. The Tribunal has awarded a sum of Rs.15,000/- as compensation on the head of pain, shock and suffering by the appellant. As noted earlier, the appellant had undergone the prolonged treatment for the injuries sustained by him in the vehicular accident. The appellant, in his oral deposition at Exh.34, deposed that he remained as indoor patient in the hospital for two months. The oral testimony of the appellant gets support from the oral deposition of his uncle Ishwarbhai Budharbhai, at Exh.38. The appellant had sustained a fracture in the front part of his head and had suffered a great pain and mental agony. In our opinion, the Tribunal has not awarded a just and adequate compensation on the head of pain, shock and suffering. The learned counsel for the appellant has invited our attention to the reported decision in the case of Pravinchandra Jivraj Mehta vs. Lalbhai Melabhai Vasava and others, reported in 1982 (2) GLR p.582, wherein, the High Court had, for the similar injuries and the period of prolonged treatment, awarded a sum of Rs.25,000/- on the head of pain, shock and suffering. In view of the settled legal principles, and looking to the nature of the injuries and the prolonged treatment undergone by the appellant, it would be just and proper to award a sum of Rs.25,000/- to the appellant for the injuries sustained by him in a vehicular accident on the head of pain, shock and suffering. The compensation awarded on other heads by the Tribunal is just and proper and does not call for any interference.

7. As a result of foregoing discussion, this appeal is partly allowed. The appellant would be entitled to compensation Rs.25,000/- (Rupees twenty five thousand only) on the head of pain, shock and sufferings, instead of Rs.15,000/- awarded by the Tribunal, and Rs.5,000/(Rupees five thousand only) on the head of medical expenses, instead of Rs.961/- awarded by the Tribunal. The appellant shall also be entitled to interest at the rate of 6% (six per cent) per annum on the enhanced amount of compensation, from the date of the application till realisation. The award of the Tribunal be modified accordingly. Decree accordingly. There shall be no order as to costs.

April 4, 2002 (M.H. Kadri, J.)

(K.A. Puj, J.)

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